

## NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

### NOTICE OF EMERGENCY RULEMAKING

#### TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

#### CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

*Editor's Note: The following renewal of the Notice of Emergency Rulemaking at 16 A.A.R. 839, May 21, 2010 was reviewed per Laws 2010, Ch. 287, § 18. The Governor's Office authorized the notice to proceed through the rulemaking process October 5, 2010. (See the text of § 18 on page 2184.) The original Notice of Emergency Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer. The Governor's Office authorized the notice to proceed through the rulemaking process on July 8, 2010. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.)*

[R10-158]

#### PREAMBLE

**1. Sections Affected**

R20-4-1301  
R20-4-1302  
R20-4-1303  
R20-4-1304  
R20-4-1305  
R20-4-1305

**Rulemaking Action**

Amend  
Amend  
No change  
Amend  
Repeal  
New Section

**2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 6-123(2)

Implementing statute: A.R.S. §§ 6-126, 6-991.01, 6-991.02, 6-991.03, 6-991.04, 6-991.07

**3. The effective date of the rules:**

October 22, 2010

The rules shall become legally effective upon expiration of the current emergency rules that became effective April 27, 2010. The emergency rules currently in effect will expire on October 24, 2010, therefore the effective date of the renewal of emergency rulemaking shall be October 24, 2010. The Department currently has a docket opening and a Notice of Proposed Rulemaking on file with the Secretary of State's office in order to establish these emergency rules as final rules. The renewal of the emergency rules will need to become effective on the proposed date in order to fill a gap between the time the current rules expire and the time the proposed rulemaking goes into effect.

**4. Is this rulemaking a renewal of a previous emergency rulemaking?**

Yes, Notice of Emergency Rulemaking: 16 A.A.R. 839, May 21, 2010

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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**6. An explanation of the rule, including the agency's reason for initiating the rule:**

On July 7, 2008, Governor Napolitano signed SB 1028 enacting amendments to existing statutes and adding A.R.S. Title 6, Chapter 9, Article 4 (A.R.S. §§ 6-991 through 6-991.08), creating the licensed profession of loan originator. The provisions of HB 2143 from the 49th Legislature, 1st Regular Session enlarge upon those statutes, and harmonize them with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289, 122 Stat. 2810, 12 U.S.C. 5101 through 5116 (the S.A.F.E. Act)). The new state statutes recite that the fees specified in these new Sections shall be determined by the Superintendent. New Section R20-4-1304 fulfills that mandate. The rest of the new Sections establish critical elements of the licensing program authorized by SB 1028 and revised by HB 2143 (2009). R20-4-1301 states the scope of the new Article of rules for the program. R20-4-1302 outlines the pre-licensure course of study loan originators must complete to be licensed. R20-4-1303 details the specifics of the statutory financial responsibility requirements that begin with the original application for a license. Finally, R20-4-1305 describes the process for loan originators to challenge information that the superintendent enters into the Nationwide Mortgage Licensing System and Registry.

There are a few differences between the emergency rules currently in effect and those being proposed for renewal. When these emergency rules were first requested, R20-4-1305 contained detailed instructions regarding the approval of courses for education; however those provisions have since been removed. In its original phase, the Nationwide Mortgage Licensing System had not been established long enough to be able to approve courses as required by statute, so there was a period of time when the Department of Financial Institutions had to approve courses, and the guidelines had to be outlined in rule. Now that NMLS has their course approval system in place, this responsibility no longer belongs to the Department, and that rule was therefore removed. R20-4-1305 was changed from "Education Units" to "Practice and Procedure" in order to incorporate the requirement of A.R.S. §§ 6-991.03(K) and 6-991.04(M) to establish a procedure for challenging information entered into the nationwide mortgage licensing system and registry. Any other minor changes are considered to be technical and conforming.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The summary of the economic, small business, and consumer impact:**

**A. The Department of Financial Institutions**

**Benefit:** The Department will realize no immediate economic benefit from this rulemaking. Licensing fees collected under the present statutory scheme accrue to the Financial Services Fund, established by A.R.S. § 6-991.21. Under that provision, at a point in the future, the Department will realize the benefit of those funds when sums are appropriated by the legislature for use in supervising and regulating loan originators. That future, contingent benefit arises not under these rules but as a result of possible legislative appropriations. The Department expects to realize an indirect economic benefit from these rules because they will facilitate communication with licensees and applicants about how to satisfy the demands of the new licensing program.

**Cost:** The Department will incur administrative and overhead costs to collect, account for, and remit the licensing and other fees. Likewise, the Department will incur costs to operate the licensing program including evaluating applications and other submissions, as well as documentation of loan originators' pre-licensure education units.

**B. Other Public Agencies**

There are no known costs or benefits to other public agencies.

**C. Private Persons and Businesses Directly Affected**

**Benefit:** Loan originators will benefit from this rulemaking because it establishes licensing fees that are statutorily mandated to be determined by the Superintendent. They will also benefit from the rules' detailed information about the qualifications for licensure.

The state's real estate and mortgage lending education and training providers will benefit from the demand for their services created by the new program. They will also have the benefit of the rules' detailed information about what training and education will be required for loan originators.

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**Cost:** Loan Originators will bear the cost of licensing fees that have not been previously required. Loan originators are required by law to be employed by licensed mortgage brokers, mortgage bankers, or consumer lenders. The employer has the option of paying the loan originators' licensing fees.

**D. Consumers**

**Benefit:** Arizona consumers will benefit from trained, educated, accountable, licensed, and regulated loan originators.

**Cost:** There is a possibility that some mortgage lenders will pay the cost of their loan originators' licensure and pass those costs on to consumers through higher fees.

**E. Private and Public Employment**

**Benefit:** By implementing the legislative mandate to license loan originators these new Sections will allow loan originators to remain employed in their chosen profession.

**Cost:** The Department cannot estimate the costs of this rulemaking to public and private employment with any precision or accuracy.

**F. State Revenues**

**Benefit:** The Department's current projection is that 5,000 to 8,000 loan originators will apply to be licensed in the first year of the licensing program

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**10. Incorporation by reference and their location in the rules:**

There is no material incorporated by reference in these rules.

**11. An explanation of the situation justifying the rules' making as emergency rules:**

The emergency rules were approved by the Attorney General's Office and went into effect on April 27, 2010. After the rules were established, the Department filed a letter with the Governor's office to ask for an exemption to the Moratorium on Rulemaking in order to file a Notice of Proposed Rulemaking with the Secretary of State's office to adopt these rules as permanent. On July 8, 2010, the Department received confirmation from the Governor's office that these rules were necessary and appropriate according to the provisions outlined in the Governor's Moratorium on Rulemaking, and the rulemaking was granted an exemption (see *Editor's Note*). The Department continued with the rulemaking process, but it has come to our attention that the rules may or may not be through the rulemaking process and approved by the Governor's Regulatory Review Council in order to be in place before the current rules expire. This is the reason for filing for a request for renewal of an emergency rulemaking with the Attorney General's Office.

The need for the renewal of these emergency rules is not a result of any delay or inaction by the Department. The circumstances could not have been averted by timely compliance with the notice and public participation provisions of the Administrative Procedure Act. Failure to have these emergency rules renewed upon expiration will endanger the public health, safety, or welfare. The legislature established a loan originator licensing program to protect the mortgage lending industry and the public from unskilled and unaccountable loan originators. A.R.S. §§ 6-991 - 6-991.22 establishes the licensing profession of loan originators and stipulates that loan originators are required to be licensed from and after July 1, 2010. The law also requires that applicants complete a program of study that must be defined and approved by the Superintendent. The rules are necessary as a renewal of an emergency rulemaking so that the Department can continue collecting fees and continue licensing loan originators in order to protect not only the consumers, but the welfare of the applicants who need licenses in order to operate as a loan originator.

**12. The date of the Attorney General's approval of the emergency rules:**

October 20, 2010

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS**

**ARTICLE 13. LOAN ORIGINATORS**

Section

- R20-4-1301. Scope of Article
- R20-4-1302. Course of Study to Qualify for Licensure
- R20-4-1303. Financial Responsibility
- R20-4-1304. Fees

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R20-4-1305. ~~Education Units~~ Practice and Procedure

ARTICLE 13. LOAN ORIGINATORS

**R20-4-1301. Scope of Article**

~~The rules in this Article apply to:~~ This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

**R20-4-1302. Course of Study to Qualify for Licensure**

~~A. A course provider shall submit the following items to the Superintendent to request approval of the course of study it offers:~~

- ~~1. Course materials;~~
- ~~2. Class content outlines on a session-by-session basis; and~~
- ~~3. Sample final exam.~~

A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289, 122 Stat. 2810, 12 U.S.C. 5101 through 5116).

~~B. The Superintendent shall approve the course provider's course of study upon review of the items submitted under subsection A if the Superintendent determines the proposed course of study contributes to the development, maintenance, and improvement of professional competence. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory the Superintendent may withhold or suspend approval. The Superintendent shall, under the authority of A.R.S. § 6-991.03(E) and (F), approve courses that have been approved by the Nationwide Mortgage Licensing System.~~

~~C. B.~~ An applicant for a loan originator license shall satisfactorily complete a course of study by:

1. Attending at least 20 hours of instruction; and
2. Receiving a passing grade of not less than 75 percent correct answers on the final examination required by A.R.S. § 6-991.07 both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289, 122 Stat. 2810, 12 U.S.C. 5101 through 5116).

~~D. A "unit" of class instruction, as that term is used in this article, shall consist of a minimum of 50 continuous minutes of instruction.~~

~~E. C.~~ A pre-licensure course of study shall include 20 units hours of instruction in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): ~~3-units~~ Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: ~~3-units~~ Three hours;
3. Non-traditional mortgage product lending standards: ~~2-units~~ Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws: ~~4-units~~ Four hours;
5. The remaining eight units hours should be comprised of instruction in the obligations between principal and agent, the statutory and regulatory laws governing loan originators, arithmetical computations common to mortgage lending, principles of real estate lending, the purpose and effect of mortgages, deeds of trust, and security agreements, the terms and conditions of conforming and non-conforming residential mortgages, real estate appraisal and the principles of appraisal independence.

D. A continuing education course of study shall include eight hours of instruction each year in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws: One hour.

**R20-4-1303. Financial Responsibility**

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or

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2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

**R20-4-1304. Fees**

Loan Originator program fees shall be as set out in this subsection:

1. Initial application fee (non-refundable) pursuant to A.R.S. § ~~6-126(A)(34)~~ 6-126(A)(33): \$350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): \$150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. § 6-126(C)(13): \$150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): \$50,
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): \$50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): The amount charged by the vendor,
7. Late renewal fees fee pursuant to A.R.S. § 6-991.04(E): ~~of~~ \$25 per day after the filing deadline.

**R20-4-1305. Education Units Practice and Procedure**

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

- ~~A.~~ Loan originators can earn education units, as defined in Section R20-4-1302(D), by attendance at classes, or participation in interactive online class sessions. Units shall be approved by the Superintendent if they contribute to the development, maintenance, and improvement of professional competence.
- ~~B.~~ The Department shall give credit for education units, as defined in R20-4-1302(D). Credit shall be given for whole units only.
- ~~C.~~ A loan originator may earn education units for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants:
  1. Qualified programs shall:
    - a. Be developed by persons knowledgeable and experienced in the subject matter;
    - b. Provide written outlines or full text;
    - c. Be administered by an instructor or organization knowledgeable in the program content; and
    - d. Utilize teaching methods consistent with the study program.
  2. An ethics program taught or developed by an employer or co-worker of a loan originator does not qualify for the ethics requirements of subsection R20-4-1302(E)(2).
- ~~D.~~ Applicants shall deliver to the Department an affidavit detailing the education units they have completed, together with original certificates evidencing completion for each unit. The affidavit shall show:
  1. Sponsoring organization;
  2. Location of program;
  3. Title of program or description of content;
  4. Education units earned; and
  5. Dates of attendance.
- ~~E.~~ Applicants shall maintain for three years, and provide the Superintendent upon request, the following documents: course outline, proof of attendance or participation, and photocopied certificates evidencing completion.